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PRESIDING OFFICER'S  
RULING NO. C2001-1/7

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Complaint on Sunday and Holiday Collections

Docket No. C2001-1

PRESIDING OFFICER'S RULING ON  
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE  
TO RESPOND TO INTERROGATORIES  
DFC/USPS-50 AND 53, AND DBP/USPS-13(g), 14 AND 16

(Issued July 27, 2001)

On July 11, 2001, Douglas F. Carlson filed a motion to compel the Postal Service to respond to interrogatories DFC/USPS-50 and 53.<sup>1</sup> On July 13, 2001, David B. Popkin filed a motion to compel the Postal Service to respond to interrogatories DBP/USPS-13(g), 14 and 16.<sup>2</sup> Both motions will be examined concurrently because of the overlap in subject matter in interrogatories DFC/USPS-50 and DBP/USPS-13(g). These interrogatories involve holiday mail consolidation plans. Interrogatory DFC/USPS-53 concerns advertising materials. Interrogatories DBP/USPS-14 and 16 concern the Postal Operations Manual (POM). The interrogatories were filed with the Commission on June 21, 2001.<sup>3</sup> The Postal Service filed objections to the

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<sup>1</sup> Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-50 & -53, filed July 11, 2001 (Carlson Motion).

<sup>2</sup> David B. Popkin Motion to Compel Responses to Interrogatories to the United States Postal Service [DBP/USPS-13g, 14, and 16] and Potential Motion for Late Acceptance, filed July 13, 2001 (Popkin Motion). Accepting this motion to compel one day late will not prejudice any party. Therefore, the included motion for late acceptance is granted.

<sup>3</sup> Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-25-58), filed June 21, 2001. David B. Popkin Interrogatories to the United States Postal Service [DBP/USPS-13-17] and Potential Motion for Late Acceptance, filed June 21, 2001. The Popkin's interrogatory was filed timely. Therefore, the included motion for late acceptance is moot.

interrogatories on June 28, 2001.<sup>4</sup> The Postal Service subsequently filed a response to both motions to compel on July 18, 2001.<sup>5</sup>

DFC/USPS-50 and DBP/USPS-13(g). Interrogatories DFC/USPS-50 and DBP/USPS-13(g) concern Postal Service mail consolidation plans. DFC/USPS-50 and DBP/USPS-13(g) state:

DFC/USPS-50. Please refer to the data provided in USPS-LR-2. For 2000 and 2001, for all plants that, according to the data, did not process outgoing First-Class Mail on holidays, please identify whether those plants sent their outgoing First-Class Mail to another plant for processing under an "Area Mail Processing" or consolidation plan and, if so, the plant to which they sent the mail.

DBP/USPS-13(g). Please refer to USPS-LR-2/C2001-1, . . . [g] Please provide a revised library reference USPS-LR-2/C2001-1 that utilizes a code, such as "FWD", to indicate those instances where the mail was forwarded to another facility to process. [h]. . .

The Postal Service objects to these interrogatories based on burden. It states that research at the local level may require one or two hours of effort per office. However, there would be a major effort required at the Headquarters level lasting over several weeks to coordinate and develop a comprehensive response.

The Postal Service alleges that the aggregate data presented at the national level, in response to DFC/USPS-10(b), is a more efficient and useful way to address the issues in this proceeding.<sup>6</sup> Thus, the Service objects to these interrogatories based on the grounds of materiality. It states that an attempt to refine the material presented in USPS-LR-2 will not aid in the resolution of the issues in this proceeding. Furthermore,

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<sup>4</sup> Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-25, 31, 40, 50 and 53, filed June 28, 2001. Objection of the United States Postal Service to Popkin Interrogatories DBP/USPS-13-16, filed June 28, 2001.

<sup>5</sup> Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-51 & 53, filed July 18, 2001. Response of the United States Postal Service in Opposition to the Popkin Motion to Compel Regarding DBP/USPS-13(g), 14, and 16, filed July 18, 2001.

<sup>6</sup> The Postal Service incorporates by reference its discussions in opposition to interrogatory DFC/USPS-10(b).

USPS-LR-3, that has been provided, contains some illustrative information about consolidation practices in the Pacific area, and further information about consolidation plans can be discovered by careful examination of USPS-LR-2. Moreover, the Postal Service concludes that consolidation practices, like volume data, do not shed light on the question of whether mail is being deposited for convenience, or because mailers want mail service on those days.

Separately, the Postal Service notes that both interrogatories are similar, but interrogatory DBP/USPS-13(g) is even more burdensome because it covers all years from 1992 to 2001, versus the years 2000 to 2001.

Carlson argues that he needs a response to DFC/USPS-50 to show the level of service being provided in specific areas. Whether service is being provided in a specific area is important to addressing the adequacy of service in that area. Carlson disagrees that the Postal Service has an unduly high burden in compiling this information for the years 2000 and 2001.

Popkin argues that he needs a response to DBP/USPS-13(g) to evaluate the percentage of plants that process mail on a given holiday. He states that this can be used as a proxy as to the percentage of the population that has mail service available to them, and is material to the adequacy of service issue.

In its response, the Postal Service expands on its argument that an answer to this interrogatory is not material to resolution of this Complaint. It again argues that the aggregate data at the national level already provided is more useful, and is independent of any consolidation plan that may have been in effect. The Service stands by its estimate for the time burden involved in coordinating and developing a responsive answer. It augments the burden assessment of interrogatory DBP/USPS-13(g) by stating that going back the requested number of years would likely be more difficult to obtain and be susceptible to gaps. The Service concludes that without comprehensive information, it is not clear there would be a benefit to this analysis.

Both interrogatories essentially seek the same information. Interrogatory DBP/USPS-13(g) seeks information over a greater time span than interrogatory

DFC/USPS-50. Interrogatory DFC/USPS-50 seeks greater detail than interrogatory DBP/USPS-13(g) in that it not only asks whether the mail was forwarded for processing, but it also asks for identification of where the mail was forwarded. The Postal Service has a higher burden in responding to DBP/USPS-13(g) because research would have to be conducted encompassing a greater time span. Shortening the time span to the years 2000 to 2001 will greatly reduce this burden. What will be lost, given the modification, is the ability to compare trends in consolidation plans, and its relation to adequacy of service, over a greater number of years. This trend comparison is not highly relevant to resolution of this Complaint. Comparisons at the national level may be more relevant. Thus, the time span for consideration of interrogatory DBP/USPS-13(g) shall be shortened to two years. By making this change, interrogatory DFC/USPS-50 now encompasses the question asked in interrogatory DBP/USPS-13(g).

A response to DFC/USPS-50 is necessary to understanding the geographic area that receives holiday and holiday eve mail processing. It is therefore relevant to the issues of this Complaint. The national data provided with USPS-LR-2 is responsive as to volume, but there is no way other than speculation to determine what geographic percentage of the country is generating the holiday mail for which processing is reported in that library reference. This is relevant to the adequacy of service issue. Therefore, the motion to compel a response to DFC/USPS-50 is granted. An answer to interrogatory DFC/USPS-50 shall be considered responsive to interrogatory DBP/USPS-13(g).

DFC/USPS-53. Interrogatory DFC/USPS-53 concerns material related to advertising. DFC/USPS-53 states:

Please provide all reports, studies, literature, and other documents in the possession of Postal Service marketing staff or other staff that describe, either in specific terms or general conceptual terms, the number of times that an advertising or other message should run, and the frequency with which it should run, in order to reach particular or desired percentages of the audience, as well as the number of media outlets in which an

advertising message should run in order to reach particular or desired percentages of the population.

The Postal Service objects to this interrogatory based on burden and relevance. The Service alleges that Carlson is just as capable as the Postal Service of conducting a literature search on this topic. Thus, Carlson should have the burden to locate relevant information and sponsor it for the record. Moreover, the Service alleges that advertising practices are irrelevant to this complaint. The Service differentiates between notification of holiday service changes via the media and, as this interrogatory states, advertising, which may include promotion of brand or product awareness.

Carlson moves to compel a response to this interrogatory by arguing that the interrogatory is relevant to evaluating whether the Postal Service adequately informs customers of changes in holiday and holiday eve collections.<sup>7</sup> He is attempting to draw a parallel between marketing and informational announcements. Carlson states that the Postal Service's challenge that a parallel can be drawn between marketing and informational announcements goes to the weight that should be placed on this evidence, not on its relevance. He also notes that the interrogatory is not just focused on advertising, but also on "other message[s]." Carlson concludes by arguing that it is the Postal Service's burden to produce this evidence if it is in its possession.<sup>8</sup>

In its response, the Postal Service states that if the interrogatory had referred to "public service information message" as opposed to "advertising or other message," the Postal Service would have provided an answer. The Service indicates that this would have limited the burden in answering the interrogatory. However, the Postal Service states that Carlson's interest appears to be in the probative value of advertising evidence, which the Service argues is irrelevant to the issues of this Complaint.

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<sup>7</sup> Carlson has not included the request for "literature" in this motion to compel.

<sup>8</sup> Carlson cites Docket No. R2000-1, POR 28 at 5 in support of this conclusion. The Postal Service discusses publicly available "literature" in its argument, whereas Carlson, in answering the Postal Service's argument, discusses publicly available "information" in the possession of the Postal Service. Both parties are arguing different concepts that are not directly on point to the specific facts involved in the Docket No. R2000-1, POR 28 ruling.

The Postal Service also discusses the burden associated with obtaining such information. It alleges weeks of effort are involved because of the wide variety of personnel working on matters with potential overlap to product development and marketing that would have to be consulted. Furthermore, if advertising strategies were located, the issue of commercial sensitivity would arise.

The breath of this interrogatory is great, and as written, will place an undue burden on the Postal Service to formulate a responsive answer. Carlson has narrowed the interrogatory by removing the category of "literature" from his request. This reduction in scope is worth pursuing, although it fails to go far enough in narrowing the interrogatory to an acceptable level. The category of "advertising or other message" does not place sufficient bounds on the interrogatory. The conceivable permutations in types of advertising by itself make this interrogatory overly broad.

The effectiveness of public service messages in informing the public about temporary changes in service, however, is relevant to this Complaint. Carlson appears to be undertaking an indirect approach to examine this issue by attempting to draw parallels between the success of advertising and the success of informing the public of changes in collections.<sup>9</sup>

Discretion will be used to modify this interrogatory in an attempt to obtain a more direct answer that is relevant to this proceeding. The Postal Service has stated that if the interrogatory were worded in the terms of "public service information message," it would have provided a response. Therefore, the interrogatory shall be modified by changing the "advertising" terminology to a "public service information message" terminology. The "literature" category also shall be eliminated from consideration. This should overcome the Postal Service's objection to answering this interrogatory. This substantively changes the meaning of the original interrogatory, but it also creates an inquiry about information relevant to this Complaint. Because an interrogatory of this

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<sup>9</sup> Carlson does not have to, as suggested by the Postal Service, cite authority that this comparison is meaningful at the interrogatory stage. This argument goes more to the weight given to such a comparison, than to its relevance.

nature may lead to the discovery of relevant evidence, the motion to compel a response to DFC/USPS-53 is granted with the modifications as discussed above.

DBP/USPS-14 and 16. Interrogatories DBP/USPS-14 and 16 concern material related to the POM. DBP/USPS-14 and 16 state:

DBP/USPS-14. Please refer to your response to DBP/USPS-1a. [a] Please confirm that the Postal Operations Manual is available to members of the general public. [b] Please confirm that members of the general public may properly assume that the policies, regulations, and procedures of the Postal Service that are contained in the POM will be complied with by the Postal Service. [c] Please explain any subparts that you are not able to confirm.

DBP/USPS-16. Please refer to your response to R2000-1 Interrogatory DBP/USPS-67c. Confirm, or explain if you are unable to do so, that the POM requirement for exceptions to the level of service requiring approval by the Chief Operating Officer and Executive Vice President is still the controlling regulation when compared to the similar DMM provision which allows approval of exceptions by a District Manager.

The Postal Service objects to answering both interrogatories based on relevance, noting that the Commission chose not to hear portions of the Complaint "regarding holiday service vis-a-vis postal manuals."

Popkin alleges that the first interrogatory, DBP/USPS-14, "asks two very simple, and apparently very obvious, questions." He states that the second interrogatory, DBP/USPS-16, asks for an update and reconfirmation of the Postal Service response to Docket No. R2000-1 interrogatory DBP/USPS-67c. He argues that while the Commission has indicated that it will not focus on the requirements of the POM, it has not completely eliminated the POM from consideration.

In its response, the Postal Service states that the answer to interrogatory DBP/USPS-2 explains the current procedure and how it relates to the POM. The Service also alleges that the new interrogatories now appear to be more argumentative than directed towards obtaining useful information.

Interrogatory DBP/USPS-14 is relevant to this proceeding. It requests answers to questions related to the sources of information that are available to the public to use in determining holiday and holiday eve service levels. The Postal Service answer to DBP/USPS-2 is not on point in this instance. Additionally, PRC Order No. 1307 at 15 discusses instances where "postal manuals" may be useful to explain actual Postal Service policy, regulation, or procedure etc., and therefore, in context, still may be relevant to this proceeding. Therefore, without a persuasive argument to the contrary, the motion to compel an answer to DBP/USPS-14 is granted.

The Postal Service effectively has responded to interrogatory DBP/USPS-16 by responding to interrogatory DBP/USPS-2 per the directions contained in POR C2001-1/4. An answer to DBP/USPS-16 would not add new information to explain the current Postal Service procedure. Its only purpose would be to highlight a potential deficiency of a procedure that is no longer followed. Similar conclusions already may be drawn by referring to interrogatory DBP/USPS-2. Therefore, the motion to compel an answer to interrogatory DBP/USPS-16 is denied.

### RULING

1. The motion for late acceptance contained within David B. Popkin Motion to Compel Responses to Interrogatories to the United States Postal Service [DBP/USPS-13g, 14, and 16] and Potential Motion for Late Acceptance, filed July 13, 2001 is granted.
2. The motion for late acceptance contained within David B. Popkin Interrogatories to the United States Postal Service [DBP/USPS-13-17] and Potential Motion for Late Acceptance, filed June 21, 2001 is moot.



3. The motion to compel responses to interrogatories DFC/USPS-50 and 53 is granted consistent with the text of this ruling.
4. The motion to compel responses to interrogatories DBP/USPS-13(g) and 14 is granted consistent with the text of this ruling.
5. The motion to compel a response to interrogatory DBP/USPS-16 is denied.

  
Ruth Y. Goldway  
Presiding Officer